THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 17046 of 1997

DATED: 09-02-2007

Between:-

J.S. Kishore Kumar s/o J. Herald, aged about 43 years, Junior Assistant, St. Thomas (SPG() Boys High School, Secunderabad, R/o C/o J. Edwin, 6-2-48/1, A.C. Guards, Lak-di-ka-pool, Hyderabad.

…PETITIONER

And

The Correspondent, St. Thomas (SPG) Boys High School, Secunderabad and three others.

…

RESPONDENTS

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 17046 of 1997

O R D E R :

Questioning the action of the respondents in not treating him as having been reinstated into duty as a junior assistant with effect from 22-10-1994, and in not paying salary from that date in accordance with the proceedings issued by the fourth respondent dated 22.10.1994, the present writ petition is filed.

The petitioner, a Junior Assistant in the first respondent-school, is a habitual absentee. He was unauthorisedly absent from duty from November, 1985 to 13.10.1987 and again from 16.10.1987 to 26.10.1994 i.e. for a period of more than nine years. During this period, the management of the school did not claim his salary as grant-in-aid. Despite several letters to the first respondent asking him to join duty, the petitioner failed to do so. In the meanwhile, the first respondent sought approval for the promotion given to one Sri T.Christoper Sudhakar from the post of Record Assistant to Junior Assistant and the same was approved by proceedings dated 05-01-1991. Subsequent vacancies filled up by the first respondent were also approved. The fourth respondent issued proceedings dated 22-10-1994 asking the first respondent to reinstate the petitioner into service as a Junior Assistant. Questioning the action of the first respondent in failing to implement the orders of the fourth respondent dated 22-10-1994, the present writ petition is filed.

In the counter affidavit, it is stated that the then Head Master had

reinstated the petitioner to duty in compliance with the orders of the Regional Joint Director (4th respondent) and, while matters stood thus, in the year 1995 the petitioner without any authority had collected examination fees for the supplementary examination from failed candidates of VII Class and S.S.C. and did not remit the fee to the treasury or to the management of the school resulting in several students not being able to appear for the examination. The first respondent lodged a complaint in Crime No. 184/1995 for offences under Section 420 IPC. Ever since 14-09-1997, the petitioner again absconded from duty. In the enquiry conducted the petitioner chose not to participate.

The counter affidavit discloses habitual absence of the petitioner from duty. This coupled with allegations of misappropriation of funds would necessitate this Court to refrain from exercising its discretionary jurisdiction in favour of such an employee. Since the order of the 4th respondent dated 22.10.1994, in directing the first respondent to reinstate the petitioner was complied with, and since the petitioner had subsequently indulged in acts of misappropriation and had abandoned his services, I see no reason to exercise discretion under Article 226 of the Constitution of India, more so as the petitioner cannot be to said to have suffered any injustice in this regard. His not being paid salary is for the reason that he chose not to attend duty. It is not open for him to claim salary for the period of his unauthorized absence, which from the averments in the counter affidavit, was in excess of nine years even prior to 22-10-1994.

The writ petition fails and is, accordingly, dismissed. However, in the circumstances, without costs.

RAMESH

RANGANATHAN, J
Dated: 09-02-2007
vp